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IN THE

Supreme Court of the United States

OCTOBER TERM 1961

No. 272

C. A. PAGE PUBLISHING CO., INC., a corporation,

Petitioner,

vs.

TELFORD WORK, *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI.

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Respondents.

PETITION FOR WRIT OF CERTIORARI.

Petitioner, C. A. Page Publishing Co. Inc., a Corporation, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above entitled case March 8, 1961.

Opinions Below.

The opinion of the District Court is reported at 178 Fed. Supp. 184. The opinion of the Court of Appeals is not yet reported. The opinion of the Court of Appeals denying petitioner's Petition for a Rehearing is not yet reported. Said opinions are printed as Appendices A, B, and C, respectively, to this Petition.

Jurisdiction.

The Judgment of the Court of Appeals was entered March 8, 1961, a Petition for Rehearing was filed April 6, 1961, and the Opinion of the Court of

Appeals denying a rehearing was entered May 3, 1961. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Questions Presented.

1. Does jurisdiction of the District Court in a private antitrust suit depend upon whether or not the defendant conspirators, found by the Court to be engaged in interstate commerce, did more or less interstate commerce after they forced a sale to them of the assets of a competitor, found by the Court to be engaged in interstate commerce, by acts constituting *per se* violations of the Sherman and Clayton Acts?

2. Does the quantity of commerce involved become material in determining whether activities prohibited by the Sherman and Clayton Acts occurred within the flow of commerce?

3. Whether activities prohibited by the Sherman and Clayton Acts, whether they occur within the flow of commerce or only affect commerce between the states, must result or tend to result in the control of an interstate market in order to be actionable?

4. Does Section 18 of Title 15 U. S. C. prohibit the acquisition by more than 100 newspapers found by the trial court to be engaged in interstate commerce of the assets of a competing newspaper found by the trial court to be engaged in interstate commerce where the admitted purpose of the purchase was for the "competitive advantages" the defendants would "All share mutually". [Companion Case, R. 614]?

5. Has Petitioner been deprived of its right to a jury trial on disputed issues of fact by the Court of Appeals' treatment of the case as if it were an appeal from an adverse judgment after a trial on the merits of the jurisdictional issue when in fact it was an appeal from an order granting summary judgment?

Statutes Involved.

The Constitution of the United States provides in pertinent part as follows:

> "Amendment VII. . . .
>
> In suits at common law, where the value in controversy shall exceed $20.00, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

Title 15 U. S. C. Section 1 as is pertinent here reads as follows:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is declared to be illegal. . . ."

Title 15 U. S. C. Section 2 as is pertinent here reads as follows:

> "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor. . . ."

Title 15 U. S. C. Section 15 as is pertinent here reads as follows:

> "Any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws may sue therefor in any district Court of the United States in the district in which the defendant resides or is found or has an agent, with respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

Title 15 U. S. C. Section 18 as is pertinent here reads as follows:

> "No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.
>
> "No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more corporations engaged in commerce, where in any line of commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may

be substantially to lessen competition, or to tend to create a monopoly."

Title 15 U. S. C. Section 26 as is pertinent here reads as follows:

> "Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the anti-trust laws, including Sections 13, 14, 18 and 19 of this Title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage as granted by courts of equity, under the rules governing such proceedings, and upon the execution of the proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue."

Rule 56 of the Federal Rules of Civil Procedure as is pertinent here reads as follows:

> "(b) A party against whom a claim, counterclaim, or cross claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.
>
> "(c) . . . the judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Statement of the Case.

This action was instituted on behalf of Petitioner by way of a civil anti-trust action for treble damages and for an injunction. It is the Companion Case to *Marietta Page v. Telford Work, et al.*, hereinafter referred to as "the Companion Case." The Defendants below filed a Motion for Summary Judgment in the Companion Case and this case on February 20, 1959 [R. 131-141], and the District Court granted said Motion in an Opinion dated October 23, 1959, which disposed of Defendants' Motions in both the case at bar and in the Companion Case. (Appendix A.) The basis of the Defendants' Motion in both cases was that the District Court allegedly did not have jurisdiction as a matter of law in that the complained-of activities did not affect commerce [R. 131-141], and as stated by the District Court:

> "Both cases raise the identical jurisdictional issues and are treated together." (Appendix A, p. 1.)

The Petitioner and plaintiff in the Companion Case both appealed the decision of the District Court to the Court of Appeals for the Ninth Circuit. The decision of the Court of Appeals stated:

> "We agree with the statement of the District judge that both cases raise the identical jurisdictional issues." (Appendix B, p. 10), and
>
> "For the reasons given in the Companion Case, *Marietta Page v. Work, supra,* the judgment of the District Court in this case is likewise affirmed." Appendix B, p. 13.)

The plaintiff below in the Companion Case is filing her Petition for Writ of Certiorari in that case

with this Court concurrently herewith and Petitioner herein, therefore, will not repeat the factual background or argument made in that Petition and incorporates that Petition by reference herein with the same force and effect as if set forth in full.

The distinction between the two cases are immaterial to the question of jurisdiction but they are as follows:

1. Petitioner herein seeks injunctive relief against the Defendants below. [R. 21-22, Par. XVI (the clause beginning on line 12 of said Par. XVI of the Complaint with the words "Defendants should be, etc." and ending on line 17 of said paragraph with the words "to monopolize" was stricken from the Complaint by order of the District Court).]

2. Petitioner herein claims to have lost the bid on the delinquent tax list for Los Angeles County in the years 1951 and 1954 because of the collusive and joint bids by the defendants pursuant to the conspiracy complained of and seeks damages therefor. [R. 19-20 and R. p. 30.]

As in the Companion Case, there are no Findings of Fact by the Trial Court that negate the Petitioners claim of the conspiracy or that the defendants filed collusive bids which resulted in Petitioner losing the 1951 and 1954 delinquent tax lists or that the acquisition of Consolidated's assets, on whose behalf the Companion Case was brought, by Mutual did not create or tend to create a monopoly in the legal advertising market. [R. pp. 404-408 and particularly the Finding 13 R. 407.]

The Trial Court did find that plaintiff and defendants were engaged in interstate commerce [R. pp. 406-

407, Finding 8] but that there was no interference with the flow of national news or display advertising and that no showing was made that the defendants had any control or potential control over the interstate markets for newsprint, national display advertising, or the dissemination of national news [R. 407, Findings 10-11], and that no interstate market exists for Los Angeles legal advertising or for legal advertising in Los Angeles placed by out-of-state clients. [R. 408 Finding 14.]

The judgment of the Trial Court dismissing the action was made November 23, 1959. [R. 410.]

The Circuit Court of Appeals for the Ninth Circuit made an order that the record in the Companion Case could be considered in this case without the necessity of the duplication of the printing of the record thereof. [R. 424 to 425.]

As in the Companion Case, the Court of Appeals for the Ninth Circuit affirmed the Trial Court's judgment by treating this case as if it were an appeal from an adverse judgment after a trial on the merits of the jurisdictional issue. As in the Companion Case, Petitioner filed a Petition for Rehearing [Supp. R.], and the Circuit Court denied the Rehearing "for the reasons given in the Companion Case." (Appendix C, p. 14.)

Reasons for Granting the Writ.

Because the jurisdictional issue is identical in this case and in the Companion Case, the reasons for granting the Writ herein are the same as are stated in the Petition for Writ of Certiorari filed concurrently herewith in the Companion Case and said reasons and all

of them are incorporated herein by reference with the same force and effect as if set forth in full herein.

It should be pointed out that contrary to the statement of the Circuit Court of Appeals, the condemned activities of the defendants below in this case are the same as in the Companion Case, and that there is no exception. The Circuit Court of Appeals stated that there was no charge of territorial division of the market among the members of the Bureau and the exclusion thereof of non-members. (Appendix B, p. 10.) As pointed out by Petitioner in its Petition for Rehearing in the Circuit Court, this is not an accurate statement in that the alleged exception does not exist. [Supp. R. p. 3, Petition for Rehearing.]

It should also be pointed out that the Circuit Court's opinion erroneously states that:

> "The Los Angeles County delinquent tax list never enters the flow of interstate commerce. Just as no other single item of public or private legal advertising published in Los Angeles County ever enters the flow of interstate commerce." (Appendix B, p. 12.)

As was pointed out by the Petitioner in its Petition for Rehearing before the Circuit Court of Appeals, the County delinquent tax list is circulated to every subscriber of a newspaper publishing the same which means that it must go to the newspapers' out-of-state subscribers. [Supp. R. p. 4, Petition for Rehearing.]

As in the Companion Case, we have a case where both the Petitioner and the defendants below were found by the Trial Court to be engaged in interstate commerce and for the purposes of this Petition, it must

be admitted that the defendants were guilty of *per se* violations of the anti-trust laws in the legal advertising segment of the newspaper publishing business. Hence, even were the prohibited activities limited to an intrastate phase of the defendants' below business, those activities are included within the scope of the anti-trust laws under the decision of this Court in *Moore v. Mead's Fine Bread Co.*, 348 U. S. 115. The language in that decision found at pages 119 and 120 is particularly applicable and reads as follows:

> "We have here an interstate industry increasing its domain through outlawed competitive practices. The victim, to be sure, is only a local merchant; and no interstate transactions are used to destroy. But the beneficiary is an interstate business; the treasury used to finance the warfare is drawn from interstate, as well as local, sources which include not only respondent, but also a group of interlocked companies engaged in the same line of business; and the prices on the interstate sales, both by respondent and by the other Mead companies, are kept high while the local prices are lowered. If this method of competition were approved, the pattern for growth of monopoly would be simple. As long as the price warfare was strictly intrastate, interstate business could grow and expand with impunity at the expense of local merchants. The competitive advantage would then be with the interstate combines, not by reason of their skills or efficiency but because of their strength and ability to wage price wars. The profits made in interstate activities would underwrite the loss of local price-cutting campaigns. No instrumentality of interstate commerce would

be used to destroy the local merchant and expand the domain of the combined, but the opportunities afforded by interstate commerce would be employed to injure local trade. Congress, as guardian of the commerce clause, certainly has power to say that those adavntages shall not attach to the privilege of doing an interstate business. . . .

"It is, we think, clear that Congress by the Clayton Act and Robertson-Patman Act barred the uses of interstate business to destroy local businesses, outlawing the price cutting employed by the respondent."

Conclusions.

We respectfully submit that for all the reasons stated in the Petition for Writ of Certiorari in the Companion Case, filed concurrently herewith, that this Court should grant Petitioner's Petition herein.

Respectfully submitted,

DUDLEY K. WRIGHT,
Attorney for Petitioner.

APPENDIX A.

Opinion of the United States District Court, Southern District of California, Central Division.

United States District Court, Southern District of California, Central Division.

No. 14390-WM Civil.

C. A. Page Publishing Co., Inc., a California corporation, Plaintiff, vs. Telford Work, *et al.*, Defendants.

No. 14391-WM Civil.

Marietta Page, Plaintiff, vs. Telford Work, *et al.*, Defendants.

Solomon, Judge:

Each case is now before the court on plaintiffs' motions for partial summary judgment, and on defendants' motions for summary judgment; each motion is directed to the issue of jurisdiction under the Sherman and Clayton Acts. Both cases raise the identical jurisdictional issues, and are treated together. The court has taken testimony in addition to the [328] affidavits of counsel, and the parties are in agreement that all evidence relative to the jurisdictional issue is now before the court.

Plaintiff C. A. Page Publishing Company owns and publishes the Commercial News, a general business newspaper serving the Los Angeles area.

Defendants are a number of community newspapers serving small neighborhoods in and around Los Angeles and the Los Angeles Newspaper Service Bureau together with several of its officers. The Bureau

is owned substantially by the defendant newspapers and represents them in the solicitation of legal advertising.

Plaintiff seeks treble damages under the Sherman and Clayton Acts.[1] It claims that collusive and illegal bidding by defendants caused the Commercial News to lose printing contracts for the 1951 and 1954 Los Angeles delinquent tax lists. More particularly, plaintiff contends that defendant newspapers

(1) fixed rates for legal advertising published in their newspapers,

(2) appointed Telford Work to submit collusive and illegal bids,

(3) pooled forces and facilities to print and publish legal advertising so as to be in a position to outbid on public legal advertising all publishers who were not members of the Bureau,

(4) pooled receipts,

(5) sought to restrain the general public from [329] placing legal advertising with non-member newspapers,

(6) sought by threats, intimidation, and duress to destroy non-member newspapers,

(7) divided the market territorially among its members,

(8) placed prohibitive restrictions on new membership,

(9) bought out various non-member newspapers,

(10) succeeded in effectively eliminating competition by non-member newspapers in the publishing of legal advertising.

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[1] 15 U.S.C. §§ 1, 2, 4, 13, 15, 18 and 26.

Plaintiff contends that these activities enabled one of the defendant newspapers to obtain the contract to publish the Los Angeles delinquent tax list on bids of $52,000 in 1951, and $70,000 in 1954, as against plaintiff's bids of $109,000 in 1951 and $120,000 in 1954. Plaintiff estimates that its costs in printing the lists, had it been the successful bidder, would not have exceeded $24,000 for either list. Thus, it seeks over a half million dollars in damages, representing three times its estimated net profit of $85,000 in 1951, and $96,000 in 1954.

In the companion case, consolidated for trial, plaintiff Marietta Page brings a stockholder derivative action on behalf of Consolidated Printing and Publishing Company, the former publisher of the Los Angeles Daily Journal, a newspaper primarily engaged in the publication of legal advertising for the Los Angeles area.

She alleges that defendant newspapers sought to destroy the Journal, a non-member of the Bureau, and by their [330] activities impaired the revenues of the Journal so severely that the owners of Consolidated were forced to sell out for one million dollars less than the former value of the Journal. Thus, plaintiff seeks, for Consolidated, $3,000,000, treble its alleged loss.

Plaintiffs argue that a newspaper is by its nature engaged in interstate commerce, and therefore acts which interfere with the normal operation of a newspaper business necessarily affect interstate commerce sufficiently to satisfy the jurisdictional requirements of the Sherman and Clayton Acts.

We may assume that the plaintiff and defendant newspapers are engaged in interstate commerce by vir-

tue of (1) their regular purchases of newsprint from sources outside of California, (2) their carriage of some national news and feature items, (3) their carriage of some national advertising, and (4) a few out-of-state subscribers.

However, the test of jurisdiction is not that the acts complained of affect a business engaged in interstate commerce, but that the offensive acts affect the interstate commerce of such business or any business. Furthermore, it is not all economic consequences to interstate commerce which confer jurisdiction but only those anti-competitive consequences which the statutes are designed to prevent.[2]

This principle was very well expressed in Mandeville Farms v. Sugar Co., 1947, 334 U. S. 219, 234, where the court stated:

"[G]iven a restraint of the type forbidden by the Act * * * and a showing of actual or threatened effect upon interstate commerce, the vital question be-

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[2]"The word 'affect' is used in two different situations under the antitrust laws. A case under the antitrust laws, so far as the interstate commerce element is concerned may rest on one or both of two theories:

(1) That the acts complained of, occurred within the flow of interstate commerce. This is generally referred to as the 'in commerce' theory.

(2) That the acts complained of, occurred wholly on the state or local level, in intrastate commerce, but substantially affected interstate commerce.

"Under both of these theories, the transactions complained of must affect or have an effect on interstate commerce or the requirements of the statute are not satisfied. Under the 'in commerce' theory, the ultimate effect on interstate commerce is the impact on that commerce under a qualitative and not a quantitative test. If there is price fixing or division of the market involved, there are violations per se, as a matter of law. Where there is involved no price fixing or division of the market, the

comes whether the effect is sufficiently substantial and adverse to Congress' paramount policy declared in the Act's terms to constitute a forbidden consequence."

In Sears, Roebuck & Company v. Blade, S. D. Cal. 1953, 110 F. Supp. 96, Sears brought a treble damages action against its former Los Angeles advertising manager and several local engravers, arising out of an alleged kick-back arrangement between the manager and his co-defendants in the sale to Sears of engravings and mats.

Ample facts appeared to qualify Sears as a business engaged in interstate commerce, and the court so found. Nevertheless, the court dismissed the action on the express ground that the acts complained of were not alleged to have restrained or have tended to restrain these interstate activities in which Sears was engaged. Accord. Feddersen Motors v. Ward, 10 Cir. 1950, 180 F. 2d 519, Boro Hall Corp. v. General Motors, 2 Cir. 1946, 130 F. 2d 196, on rehearing. See also Brenner v. Texas Co., D. C. N. D. Cal. 1956, 140 F. Supp. 240, 243.

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effect of the transactions complained of may be a question of law or a mixed question of law and fact.

"Turning to the second alternative, where acts wholly within intrastate commerce substantially affect interstate commerce, these acts may occur before goods enter the flow of commerce, or after they leave the flow of commerce. Here we have a question of fact as to whether the wholly intrastate acts substantially affect the flow of commerce.

"After determination of the issue as to whether the wholly intrastate acts substantially affect the flow of commerce, we then reach the same problem that is reached under the 'in commerce' theory, namely the ultimate effect or impact of the acts complained of on interstate commerce and again the test is a qualitative one and not a quantitative test, and again is a question of law, or a mixed question of law and fact." Las Vegas Merchant Plumbers Ass'n v. United States, 9 Cir. 1954, 210 F. 2d 732, 739, n.3. [332]

In every case cited by plaintiff involving news media, a defendant had restrained, or attempted to restrain, competition in the interstate market for national news and advertising. Lorrain Journal v. United States, 342 U. S. 143 (1951); Farmers Guide Co. v. Prairie Co., 293 U. S. 268 (1943); Greenspun v. McCarran, D. C. Nev. 1952, 105 F. Supp. 662, and United States v. The Times-Picayune Publishing Co., D. C. E. D. La. 1952, 105 F. Supp. 670.

In each of these cases, newspapers, enjoying dominant positions in local or regional newspaper markets, utilized various methods outlawed by the Sherman Act, to draw advertising from competing news media, in order to drive competitors out of business and to monopolize local markets for interstate news and advertising.

In Evening News Publishing Co. v. Allied Newspaper Carriers of N. J., 3 Cir. 1959, 263 F. 2d 715, an association of newspaper carriers utilized its dominant position of the home delivery market to force the Evening News to abandon [333] the use of newsboys in order to restrain and monpolize home deliveries of the News. The court held that the dissemination of national news and advertising was "an essential element of [the newspaper's] being", and that home delivery is "an integral part of the interstate operation".

In the present case, the loss of the delinquent tax list contracts was not alleged to have threatened the normal operation of the Commercial News—a newspaper of general circulation neither primarily devoted to, nor economically dependent upon legal advertising. Thus, although the Commercial News carried substantial

amounts of national news and display advertising, there was no interference with the flow of such news and advertising to Commercial News readers. On the other hand, the Los Angeles Daily Journal, which is primarily devoted to legal advertising, carried insignificant quantities of national news and display advertising, so that even if we assume that the original Journal was eliminated as a competitor and the current Journal is a new and distinct entity, the elimination of the Journal also did not interfere with the flow of national news and display advertising.

Furthermore, even if the original Journal had carried substantial news and advertising and even if the Commercial News had been destroyed by defendants' activities, no showing could have been made that the defendants had any control or potential control over the interstate markets for newsprint, national display advertising, or the dissemination of national news. This is no case of creeping monopolization. Klors v. Broadway-Hale Stores, 1959, 359 U. S. 207. Plaintiffs [334] assert that the defendant newspapers were able to destroy the Journal by the exercise of control over the local legal advertising market. But this control could afford them no leverage to gain control of the interstate markets in newsprint, national news, or national display advertising, no matter how successful their monopoly of the legal advertising market, since the major users of these interstate services and commodities, such as the great metropolitan dailies, are not dependent upon the revenues brought by legal advertising.

If there existed an appreciable interstate market for Los Angeles legal advertising or a Los Angeles market for legal advertisements placed by out-of-state clients,

a case might be made out for the anti-competitive effects of defendants' activities on these markets. No such markets exist. The Journal is the only newspaper involved which is primarily devoted to legal advertising. It is the only newspaper involved whose out-of-state readers are particularly interested in legal advertising. The Journal has only 13 out-of-state subscribers, three of whom are complimentary. Similarly, legal advertisements for out-of-state clients appeared in the Journal regularly, though on a very small scale (averaging 5 items per issue), and a great majority of these items were placed by local counsel. These are not "substantial" or "appreciable" amounts of interstate commerce by any standards, and we hold that these items also come within the maxim de minimus. See, *e.g.*, Klors v. Broadway-Hale Stores, *supra*, at 211; Mandeville Farms v. Sugar Co., *supra*, at 234; United States v. Yellow Cab Co., 1946, 332 U. S. 218, 225. Cf. Mabee v. White Plains Publishing Co., 1945, [335] 327 U. S. 178, 181; Labor Board v. Fainblatt, 1938, 306 U. S. 601, 607.

Plaintiffs' motions for partial summary judgments are denied, and defendants' motions for summary judgments are granted. Both cases are dismissed. No costs. [336.]

[Endorsed]: Filed October 23, 1959.

APPENDIX B.

Opinion of the United States Court of Appeals for the Ninth Circuit.

C. A. Page Publishing Co., Inc., a corporation, Appellant, v. Telford Work, *et al.*, Appellees. No. 16,786. March 8, 1961.

Before Chambers, Barnes and Jertberg, Circuit Judges. Jertberg, Circuit Judge.

This is a companion appeal to Marietta Page, appellant v. Telford Work, *et al.*, appellees, No. 16,787, which was this day decided. As in the Marietta Page case, appellant appeals from a judgment dismissing for want of federal jurisdiction a civil antitrust suit for treble damages. Jurisdiction of the district court was invoked under the provisions of Title 15 U. S. C. A. Sections 1, 2, 4, 7, 13, 15 and 18, commonly known as the Sherman Antitrust Act and the Clayton Act. This Court has jurisdiction under the provisions of Title 28 U. S. C. A. Sections 1291 and 1294.

As in the companion case, judgment of dismissal was entered following the granting by the district court of appellees' motion for summary judgment based on the ground that there existed no genuine issue on a material fact relating to the question of jurisdiction. Proceedings leading up to the entry of the judgment are similar to those set forth in the companion case, and judgment was entered following extensive pretrial discovery proceedings and conferences, culminating in a pretrial conference order containing 21 pages of admitted facts. The opinion of the district judge, reported at 178 F. Supp. 184, disposed of both cases. As in the companion case, the parties in effect con-

sented to a separate trial on the issue of jurisdiction. We agree with the statement of the district judge that both cases raise the identical jurisdictional issues. The background and historical material are set forth in the companion case and will not be repeated here. The condemned activities of the appellees are the same as in the companion case, except that in the instant case there is no charge of territorial division of the market among the members of the Bureau and the exclusion therefrom of non-members.

Appellant is the publisher of Commercial News, a general business newspaper serving the Los Angeles area, which was not primarily engaged in legal advertising. Appellant charges that the activities of the appellee newspapers enabled one of the appellee newspapers to obtain the contract from the County of Los Angeles to publish the Los Angeles County delinquent tax list on bids of $52,000 in 1951 and $76,000 in 1954, as against appellant's bids of $109,000 in 1951 and $121,000 in 1954. The delinquent tax list is only one of several types of public advertising contracts which is let by Los Angeles County. Appellant estimates that the cost of publishing the lists, had it been the successful bidder, would not have exceeded $24,000 for either list. Appellant claims treble the amount of estimated loss of profits on the publication of this list for the two years specified.

Publication of the Los Angeles County delinquent tax is required by California law annually, and the manner of publication is set out in detail. The publication of this 300-page document, the largest single item of public advertising purchased by Los Angeles County, produced unique mechanical and financial prob-

lems. When Commercial News, owned by appellant, did succeed in bidding successfully for the Los Angeles County tax list in 1942 and 1943, the composition work had to be assigned to the Los Angeles Daily Journal (hereinafter called the "Journal"), which was at that time owned by Consolidated Printing and Publishing Company, upon whose behalf the companion case was brought. During the years 1945 to 1950, appellees, acting through the Bureau, were successful bidders, but they also had to depend on the facilities of the Journal for a part of the operation. Consolidated, which still owned the Journal in these years, received a proportionate share of the profits from the publication of the list for the use of Journal facilities.

In 1951 the assets of the Journal were sold to Mutual Newspaper Publishing Company, (hereinafter referred to as "Mutual"), which is a subsidiary of the Bureau and which is owned substantially by appellee newspaper publishers. Thus, in 1952 (1951 list) and 1955 (1954 list), when a member of the Bureau underbid Commercial News for the Los Angeles County delinquent tax list, the low bidding member still had to use the facilities of the Journal which facilities by then were owned by Mutual.

From the above facts it appears that whoever the low bidder for the delinquent tax list might be, such low bidder required the facilities of the Journal in order to print the list. Thus, it is claimed by appellant herein that the alleged forced sale of the Journal assets to Mutual, which was the subject matter of the companion case, has rendered it impossible for appellant to bid competitively for the publication of the list, although it is not specifically alleged that appellees would have re-

fused to allow appellant to use the facilities of the Journal had it been the low bidder.

The Bureau itself never bid for the publication of the Los Angeles County tax list, nor did it publish any public or private legal advertising. No claim is made and the record discloses no irregularities in the manner in which the Los Angeles County officials conducted competitive bidding for the 1951 and 1954 lists and awarded contracts to the lowest bidders. Appellant submitted bids for the tax lists of the years in question. but it was underbid by members of the Bureau.

Appellant's contention is that it was indirectly injured by the same allegedly illegal and monopolistic activities which caused the direct injuries to Consolidated discussed in detail in the companion case. We note the same product, legal advertising, is here involved in the same market area, Los Angeles County, and the same activities by appellees have led to the injuries claimed, as in the companion case. The Los Angeles County delinquent tax list never enters the flow of interstate commerce, just as no other single item of public or private legal advertising published in Los Angeles County ever enters the flow of interstate commerce. We do not see that the effect on Commercial News of its unsuccessful bid for the Los Angeles County delinquent tax list reaches any further toward the interstate activities of newsprint purchase, commercial and display advertising, news dissemination, and out-of-state circulation than did the effect of the alleged injuries to Consolidated, discussed in detail in the companion opinion. If anything, competition in these interstate markets is less substantially affected, if affected at all. We feel that our opinion in the com-

panion case adequately covers the fact situation raised in this appeal.

Appellant here makes one point not raised in the companion case. Appellant claims that the conspiracy alleged included a restraint on the dissemination of national news through the City News Service, a news gathering agency at one time operated by appellee Telford Work individually, which suspended operations on November 11, 1944. Whatever may have been the consequences of this action to interstate commerce in news dissemination, Commercial News has charged injury only as a result of loss of public legal advertising. We see no relation between the operation of City News Service and the competition between appellees and Commercial News, for public legal advertising, and thus the interstate character of City News Service is entirely irrelevant to jurisdictional issues here presented.

For the reasons given in the companion case, Marietta Page v. Work, *supra*, the judgment of the district court in this case is likewise affirmed.

(Endorsed) Opinion Filed March 8, 1961.

Frank H. Schmid, Clerk.

APPENDIX C.

Denial of Petition for Rehearing.

C. A. Page Publishing Co., Inc., a corporation, Appellant, v. Telford Work, *et al.*, Appellees. No. 16,786. May 3, 1961.

Before Chambers, Barnes and Jertberg, Circuit Judges. *Per Curiam:*

An opinion was filed herein on March 8, 1961, ... F. 2d ...., affirming the judgment of the district court dismissing for want of federal jurisdiction a civil antitrust action.

Appellant has filed herein a petition for rehearing. We have this day denied the petition for rehearing of appellant in the companion appeal of Marietta Page, appellant, v. Telford Work, *et al.*, appellee, No. 16,787. For the reasons given in the companion case, the petition of appellant for rehearing in this case is likewise denied.

(Endorsed) *Per Curiam* Opinion Filed May 3, 1961.

Frank H. Schmid, Clerk.